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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,699	07/08/2003	Philip Nguyen	11657-11	7374
1059	7590	10/04/2005	EXAMINER	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			COURSON, TANIA C	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/614,699

Applicant(s)

NGUYEN ET AL.

Examiner

Tania C. Courson

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 06NOV03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 21-22 are objected to because of the following informalities:
  - a) claim 21 in line 1, “sho s” should read “shoes”;
  - b) claim 21 in line 2, “scann r” should read “scanner”;
  - c) Claim 22 is objected to because of the following informalities: it has an improper dependency since it states in line 1, that it depends on claim 11, which is a method claim. For examination purposes, the examiner has assumed that it is dependent on claim 13.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Dowdell (US 6,550,149 B2, 1<sup>st</sup> interpretation).

Dowdell discloses in Figures 1-18, a method and system for sizing feet comprising:

With respect to method Claim 1:

- a) obtaining a digital image of the foot (column 10, lines 30-35 and Fig. 17);
- b) generating a trace outline of the foot from a digital image of the foot (column 10, lines 35-48);
- c) deriving foot data from the trace outline (column 10, lines 60-67);
- d) comparing the foot data to corresponding data for a plurality of shoes and (column 11, lines 46-63);
- e) outputting an indicator of the best fitting shoe from among the plurality of shoes based on the results of the comparison (column 12, lines 55-63).

With respect to method Claim 7:

- a) obtaining a digital image of the foot (column 10, lines 30-35 and Fig. 17);
- b) generating a trace outline of the foot from a digital image of the foot (column 10, lines 35-48);
- c) deriving foot data from the trace outline (column 10, lines 60-67);
- d) outputting at least one of the foot data and an indicator of shoe size based on the foot data (column 11, lines 35-45).

With respect to method Claims 2-6 and 8-12:

- a) approximating at least one portion of the trace outline with at least one mathematical curve (column 12, lines 36-40);

- b) storing data relating to the at least one mathematical curve for visually representing the at least one portion of the trace outline (column 12, lines 36-40);
- c) wherein the step of deriving foot data comprises deriving a plurality of foot data points from the trace outline, and me at least one mathematical curve is derived to match the trace outline at any foot data points in the al least one portion of the trace outline (column 12, lines 36-40);
- d) wherein a heel portion of the trace outline is approximated by a half-ellipse (column 12, lines 36-40);
- e) wherein an inside arch portion of the trace outline is approximated by a B-spline curve (column 12, lines 36-40).

With respect to system Claims 13-19:

- a) a computer adapted to receive a digital image of the foot, the computer having stored thereon a software package, the software package including an image processing component, wherein the image processing component is adapted for receiving the digital image of the foot and producing a trace outline of the foot, the software package including a foot data component, wherein the foot data component is adapted to receive the trace outline and determine foot data from the trace outline (column 4, lines 9-34);
- b) wherein the software package has a comparator component and the comparator component is adapted to receive the foot data and generate, based

on the foot data, at least one of an indicator of the shoe size of the foot and an indicator of the best fitting shoe from among a plurality of shoes (column 5, lines 4-10);

- c) wherein the computer is adapted to access a shoe information database, and the comparator component is adapted to compare the foot data with corresponding data for at least one shoe in the shoe information database (Fig. 1)
- d) wherein the foot data comprises at least one of the foot length, the foot width, the metatarsal length and the heel width (Fig. 2b);
- e) wherein the foot data comprises all of the foot length, the foot width, the metatarsal length and the heel width (Fig. 2b);
- f) wherein the software package is adapted to store a representation of the trace outline on a computer readable memory (Fig. 1);
- g) further comprising an input device for generating the digital image of the foot, wherein the input device is connected to the computer (Fig. 1).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dowdell (1<sup>st</sup> interpretation) in view of Dowdell (2<sup>nd</sup> interpretation).

Dowdell (1<sup>st</sup> interpretation) discloses a method and system for sizing feet, as stated above in paragraph 3.

Dowdell (1<sup>st</sup> interpretation) discloses wherein a computer is a shoe sizing computer (Fig. 1, 20), an input device is a second computer (Fig. 1) and the second computer is connected to the shoe sizing computer (Fig. 1) and wherein the second computer is connected to the shoe sizing computer via the Internet (Fig. 1).

Dowdell (1<sup>st</sup> interpretation) does not disclose an input device is a scanner and the scanner is connected to a computer.

Dowdell (2<sup>nd</sup> interpretation) teaches a method and system for sizing feet that consists of an input device is a scanner (Fig. 11) and the scanner is connected to a computer (Fig. 11). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the method and system for sizing feet of Dowdell (1<sup>st</sup> interpretation), so as to include a scanner and connecting the scanner to a computer, as taught by Dowdell (2<sup>nd</sup> interpretation), so as to provide a greater enhancement in remote connectivity to the user during use of the system.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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The prior art cited on PTO-892 and not mentioned above disclose a method and system for sizing feet:

Mathiasmeier et al. (US 6,029,358)

Mathiasmeier et al. (US 5,729,905)

Brown et al. (US 5,659,395)

Smith (US 5,539,677)

Brown et al. (US 5,361,133)

White (US 5,237,520)

Thies et al. (US 5,206,804)

White (US 5,128, 880)

Brooks (US 2004/0081336 A1)

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.


The fax number for this Organization where this application or proceeding is assigned is (571) 273-8300..

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished



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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ  
SUPERVISORY PATENT EXAMINER  
GROUP ART UNIT 2859

TCC  
September 30, 2005